

AMENDED IN SENATE JULY 1, 2014

AMENDED IN SENATE JUNE 18, 2014

AMENDED IN SENATE MAY 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1979

Introduced by Assembly Member Nazarian

February 19, 2014

An act to amend Sections 17173, 17199.3, and 17199.4 of, and to repeal Section 17193.5 of, the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL’S DIGEST

AB 1979, as amended, Nazarian. School facilities: California School Finance Authority: definitions.

(1) Existing law authorizes the California School Finance Authority to, among other things, determine the location and character of any project to be financed or refinanced under the California School Finance Authority Act. Existing law defines the term “project” as the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility to be financed or refinanced pursuant to the act.

This bill would provide that the term “project” may also include reimbursement for the costs of acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an education facility to be financed or refinanced pursuant to the act, provided that reimbursement from bond proceeds is required to comply with federal tax law in accordance with an opinion of counsel that supports special treatment under federal tax law, as specified.

(2) Existing law authorizes a public credit provider, as defined, to require a participating party, with regard to providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a participating party, to agree to specified conditions, including allowing the Controller to allocate specified school district, county office of education, or charter school apportionments to the public credit provider if the public credit provider is required to make principal or interest payments, or both, pursuant to the credit enhancement agreement.

This bill would delete this provision.

(3) Existing law limits the total amount of revenue bonds that may be issued and outstanding at any time for purposes of the California School Finance Authority Act, other than up to \$4,000,000,000 in revenue bonds issued under a specified provision of that act, to \$400,000,000.

This bill would delete the distinction between the limits of the total amounts of revenue bonds that may be issued and outstanding at any time for purposes of the California School Finance Authority Act and under the specified provision of the act. The bill would instead set the limit of the total amount of revenue bonds that may be issued and outstanding at any time for purposes of the act at \$4,400,000,000.

(4) Existing law, the California School Finance Authority Act, authorizes a participating party, as defined, in connection with securing financing or refinancing of projects, as defined, to elect to guarantee or provide for payment of the bonds and related obligations in accordance with specified conditions.

This bill would generally revise and recast this provision of the act to authorize participating parties to provide for the funding of specified costs related to the issuance of the bonds, as well as the payment of the bonds, in accordance with prescribed requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17173 of the Education Code is amended
- 2 to read:
- 3 17173. As used in this chapter, the following words and terms
- 4 shall have the following meanings, unless the context indicates or
- 5 requires another or different meaning or intent:

1 (a) “Act” means the California School Finance Authority Act.

2 (b) “Agent” means a county or city board of education or
3 superintendent of schools acting with the board’s consent, on behalf
4 of one or more school districts for any purpose of this chapter, the
5 Board of Governors of the California Community Colleges or the
6 Chancellor of the California Community Colleges acting with the
7 Board of Governors’ consent, on behalf of one or more community
8 college districts for any purpose of this chapter, and the school
9 district, county office of education, or other chartering entity acting
10 with the consent of, and on behalf of, one or more charter schools
11 for any purpose of this chapter.

12 (c) “Authority” means the California School Finance Authority,
13 or any board, body, commission, department, or officer succeeding
14 to the principal functions of the authority, or to which the powers
15 conferred upon the authority by this chapter shall be given by law.

16 (d) “Bonds” or “revenue bonds” means bonds, notes, lease
17 obligations, certificates of participation, commercial paper, and
18 any other evidences of indebtedness.

19 (e) “Certificate of participation” means an undivided interest
20 in one or more bonds, leases, loans, installment sales, or other
21 agreements of a participating party or parties.

22 (f) “Charter school” means a school established pursuant to Part
23 26.8 (commencing with Section 47600) of Division 4 of Title 2.

24 (g) “Cost,” as applied to all or part of a project financed or
25 refinanced pursuant to this chapter, means and includes all or any
26 part of the cost of any of the following:

27 (1) Construction.

28 (2) Acquisition or improvement of all lands, structures, real or
29 personal property, rights, rights-of-way, franchises, easements,
30 and interests acquired or used for a project.

31 (3) Demolition or removal of any buildings or structures on land
32 acquired for a project, including the acquisition of any lands to
33 which the buildings or structures may be moved.

34 (4) All machinery and equipment.

35 (5) Financing or refinancing charges, including, but not limited
36 to, credit enhancement costs, and prepayment penalties.

37 (6) Interest before, during, and for a period following, the
38 completion of any construction or improvement determined by the
39 authority.

40 (7) Provisions for working capital.

(8) Reserves for principal and interest, and for extensions, enlargements, additions, replacements, renovations, and improvements.

(9) Engineering, architectural, financial, and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incident to the construction, acquisition, or improvement of any project or any financing or refinancing under this chapter.

(h) “Educational facility” means any property, facility, structure, equipment, or furnishings used or operated in conjunction with one or more public schools, including charter schools, or community colleges, including, but not limited to, all of the following:

(1) Classrooms.

(2) Auditoriums.

(3) Student centers.

(4) Administrative offices.

(5) Sports facilities.

(6) Maintenance, storage, or utility facilities.

(7) All necessary or usual attendant and related facilities and equipment, including streets, parking, and supportive service facilities or structures required or useful for the effective operation of the educational facility.

(i) “Participating party” means:

(1) A school district, charter school, county office of education, or community college district that undertakes, itself or through an agent, the financing or refinancing of a project or of working capital pursuant to this chapter.

(2) Any person, company, association, state or municipal government entity, partnership, firm, or other entity or group of entities that undertakes the financing or refinancing of a project pursuant to this chapter in conjunction with an entity described in paragraph (1).

(3) “Participating party” shall also be deemed to refer to the agent to the extent the agent is acting on behalf of the school district, charter school, county office of education, or community college district for any purpose of this chapter.

(4) For purposes of subdivision (d) of Section 17183, and Section 17193.5, subdivisions (a) and (b) of Section 17199.1, and Section 17199.4, “participating party” shall be deemed to refer to

1 an entity described in paragraph (1) in conjunction with which an
2 entity described in paragraph (2), if any, applied for financing from
3 the authority.

4 (j) “Project” means the acquisition, construction, expansion,
5 remodeling, renovation, improvement, furnishing, or equipping
6 of an educational facility to be financed or refinanced pursuant to
7 this chapter. “Project” may include reimbursement for the costs
8 of acquisition, construction, expansion, remodeling, renovation,
9 improvement, furnishing, or equipping of an educational facility
10 to be financed or refinanced pursuant to this chapter, provided that
11 reimbursement from bond proceeds is required to comply with
12 federal tax law in accordance with an opinion of counsel that
13 supports special treatment under federal tax law for the bonds
14 issued for the applicable financing or refinancing. “Project” may
15 include any combination of the foregoing undertaken jointly by
16 any participating party with one or more other participating parties.

17 (k) “Working capital” means funds to be used by, or on behalf
18 of, a participating party to pay maintenance or operating expenses,
19 or any other costs that would be treated as an expense item under
20 generally accepted accounting principles in connection with the
21 ownership or operation of an educational facility, including, but
22 not limited to, all of the following:

- 23 (1) Reserves for maintenance or operating expenses.
- 24 (2) Interest for a period not to exceed two years on any loan for
25 working capital made pursuant to this chapter.
- 26 (3) Reserves for debt service, and any other costs necessary or
27 incidental to, financing pursuant to this chapter.
- 28 (4) Payments made by a participating party for the rent or lease
29 of an educational facility.

30 SEC. 2. Section 17193.5 of the Education Code is repealed.

31 SEC. 3. Section 17199.3 of the Education Code is amended to
32 read:

33 17199.3. (a) The total amount of revenue bonds that may be
34 issued and outstanding at any time for purposes of this chapter
35 shall not exceed four billion four hundred million dollars
36 (\$4,400,000,000).

37 (b) For purposes of subdivision (a) bonds that meet any of the
38 following conditions shall not be deemed to be outstanding:

- 39 (1) Bonds that have been refunded pursuant to Section 17188.

1 (2) Bonds for which money or securities in amounts necessary
2 to pay or redeem the principal, interest, or any redemption premium
3 on the bonds have been deposited in trust.

4 (3) Bonds that have been issued to finance or refinance working
5 capital.

6 SEC. 4. Section 17199.4 of the Education Code is amended to
7 read:

8 17199.4. (a) Notwithstanding any other law, any participating
9 party, in connection with securing financing or refinancing of
10 projects, or working capital pursuant to this chapter, may, in
11 accordance with this section, elect to provide for funding, in whole
12 or in part, one or more of the following:

13 (1) Payments on authority bonds.

14 (2) Payments under credit enhancement or liquidity support
15 agreements in connection with authority bonds.

16 (3) Amounts pledged or assigned under one or more pledges or
17 assignments to pay authority bonds or obligations under these
18 credit enhancement or liquidity support agreements.

19 (4) Payments to fund reserves available to pay any of the
20 payments described in paragraphs (1), (2), and (3), exclusively
21 until paid.

22 (5) Fees and charges contemplated by the instruments of the
23 authority, trustees, tender agents, remarketing agents, credit
24 enhancement and liquidity support providers, and service providers.

25 (6) Any other costs necessary or incidental to any financing or
26 refinancing conducted under this chapter.

27 (b) The payments made pursuant to subdivision (a) may be in
28 connection with a financing or refinancing benefiting the
29 participating party itself, one or more other participating parties,
30 or any combination thereof.

31 (c) To participate under this section, the participating party shall
32 do all of the following:

33 (1) Elect to participate by an action of its governing board taken
34 in compliance with the rules of that board.

35 (2) Provide written notice to the Controller, *no later than the*
36 *date of the issuance of the bonds or 60 days before the next*
37 *payment, whichever is later*, of all of the following:

38 (A) Its election to participate.

39 (B) A schedule of the payments subject to that election.

1 (C) The payee or payees of those payments, or the trustee or
2 agent on their behalf to receive those payments.

3 (D) Payment delivery instructions, which may be by wire
4 transfer or other method approved by the Controller.

5 *(E) If the method of payment delivery is wire transfer, complete*
6 *and submit the appropriate authorization form as prescribed by*
7 *the Controller.*

8 (d) The participating party may amend, supplement, or restate
9 the notice required pursuant to paragraph (2) of subdivision (c)
10 for any reason, including, but not necessarily limited to, providing
11 for new or increased payments. The participating party shall certify
12 in the notice and in any amendment, supplement, or restatement
13 of the notice that each and every payment reflected in the schedule
14 is a payment described in subdivision (a) and the amounts
15 scheduled do not exceed the actual or reasonably estimated
16 payment obligations to be funded pursuant to this section. The
17 participating party shall also represent in the notice that it is not
18 submitting the notice for the purpose of accelerating a participating
19 party's receipt of its apportionments. Nothing in this section
20 prohibits transfer by the recipient of an apportionment under this
21 section to the participating party submitting the notice of the excess
22 apportionment above the amount needed to fund actual payments
23 where the excess resulted from erroneous estimation of scheduled
24 payments or otherwise.

25 (e) Upon receipt of the notice required by paragraph (2) of
26 subdivision (c), the Controller shall make an apportionment to the
27 indicated recipient on the date, or during the period, shown in the
28 schedule in accordance with the following:

29 (1) If the participating party requests transfers in full as
30 scheduled, in the amount of the scheduled transfer or such lesser
31 amount as is available from the sources indicated in subdivision
32 (f).

33 (2) If the participating party does not request transfers in full
34 as scheduled, in the amount of the anticipated deficiency for the
35 purpose of making the required payment indicated in a written
36 request of the participating party to the Controller and in the
37 amount of the actual shortfall in payment indicated in a written
38 request of the recipient or the participating party to the Controller
39 or the lesser amount that is available from the sources indicated
40 in subdivision (f).

1 (3) *To the extent funds available for an apportionment are*
2 *insufficient to pay the amount set forth in a schedule in any period,*
3 *the Controller shall, if and as requested in the notice, reschedule*
4 *the payment of all or a portion of the deficiency to a subsequent*
5 *period.*

6 ~~(3)~~

7 (4) In making apportionments under this section, the Controller
8 may rely conclusively and without liability on any notice or request
9 delivered under this section, including any delivered prior to
10 enactment of the act that adds this paragraph. The Controller may
11 make, but is not obligated to make, apportionments not reflected
12 on a notice or amended, supplemented, or restated notice delivered
13 under this section that the Controller receives less than 20 days
14 prior to when the apportionment would otherwise be required.

15 (f) The Controller shall make an apportionment under this
16 section only from moneys designated for apportionment to the
17 participating party delivering the notice, and only from one or
18 more of the following:

19 (1) Any revenue limit apportionments to a school district or
20 county office of education without regard to the specific funding
21 source of the apportionment.

22 (2) Any charter school block grant apportionments to a charter
23 school without regard to the specific funding source of the
24 apportionment.

25 (3) Any charter school categorical block grant apportionments
26 to a charter school without regard to the specific funding source
27 of the apportionment.

28 (g) (1) The amount apportioned for a participating party
29 pursuant to this section shall be deemed to be an allocation to the
30 participating party, and shall be included in the computation of
31 allocation, limit, entitlement, or apportionment for the participating
32 party.

33 (2) The participating party and its creditors do not have a claim
34 to funds apportioned or anticipated to be apportioned by the
35 Controller pursuant to this section.

36 (h) (1) The authority may require participation under this section
37 under the terms of any financing or refinancing under this chapter
38 to provide for one or more of the payments described in paragraphs
39 (1), (2), (3), and (4) of subdivision (a). The authority may impose
40 limits on new participation under this section. The authority may

1 require participating parties to apply to the authority for
2 participation. If the authority limits participation under this section,
3 the authority shall consider each of the following priorities in
4 making participation available:

5 (A) First priority shall be given to participating parties that apply
6 for funding for instructional classroom space under this chapter.

7 (B) Second priority shall be given to participating parties that
8 apply for funding of modernization of instructional classroom
9 space under this chapter.

10 (C) Third priority shall be given to participating parties that
11 apply for funding under this chapter for any other eligible costs,
12 as defined in Section 17173.

13 (2) The authority shall prioritize applications at appropriate
14 intervals.

15 (3) A school district electing to participate under this section
16 that has applied for revenue bond moneys for purposes of joint
17 venture school facilities construction projects, pursuant to Article
18 5 (commencing with Section 17060) of Chapter 12, shall not be
19 subject to the priorities set forth in paragraph (1).

20 (i) This section shall not be construed to make the State of
21 California liable for any payments within the meaning of Section
22 1 of Article XVI of the California Constitution.

23 (j) A school district that has a qualified or negative certification
24 pursuant to Section 42131, or a county office of education that has
25 a qualified or negative certification pursuant to Section 1240, may
26 not participate under this section.

27 (k) This section does not obligate the State of California to make
28 available the sources of apportionment under subdivision (f) in
29 any amount or any time or, except as provided in this section, to
30 fund any payment described in this section. The addition of this
31 subdivision is intended solely to clarify existing law.